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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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April 26, 1993

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Reference: MM Docket No. 93-51
New Albany, Indiana

Rita Reyna Brent
File No. BPH-911115MC


Dear Ms. Searcy:

Submitted herewith on behalf of Rita Reyna Brent are an original and six copies of a **Motion To Enlarge Issues** against Martha J. Huber in the above referenced proceeding.

If there are any questions in regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

RITA REYNA BRENT

By 
John Wells King
Henry A. Solomon

Her Attorneys

HAS:dh
Enclosure

Before The
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

MARTHA J. HUBER, et al.,

For Construction Permit for a
New FM Station on Channel 234A
in New Albany, Indiana

MM Docket No. 93-51

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: The Honorable Richard L. Sippel
Administrative Law Judge

MOTION TO ENLARGE ISSUES

Rita Reyna Brent ("Brent"), by her attorneys, respectfully moves to
enlarge issues against Martha J. Huber ("Huber") on the ground that Huber
has not demonstrated that at the time she filed her application she was

letter” and nothing more. Accordingly, the following additional issue should be specified:

To determine whether Martha J. Huber is financially qualified to be the Commission licensee of an FM station at New Albany, Indiana.


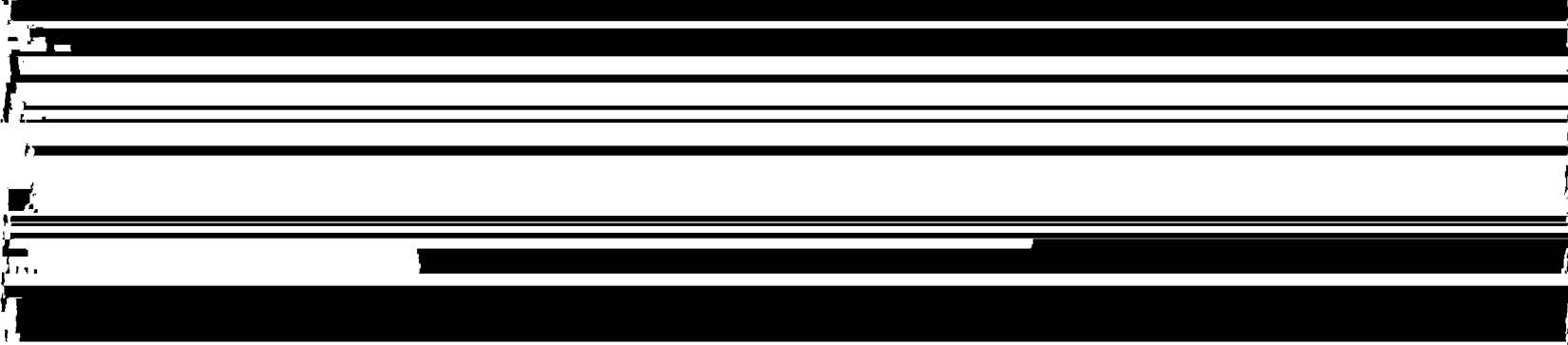
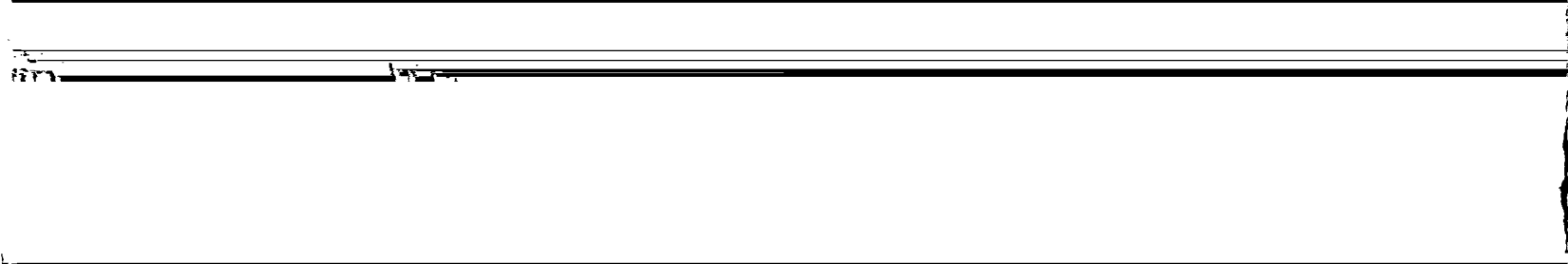
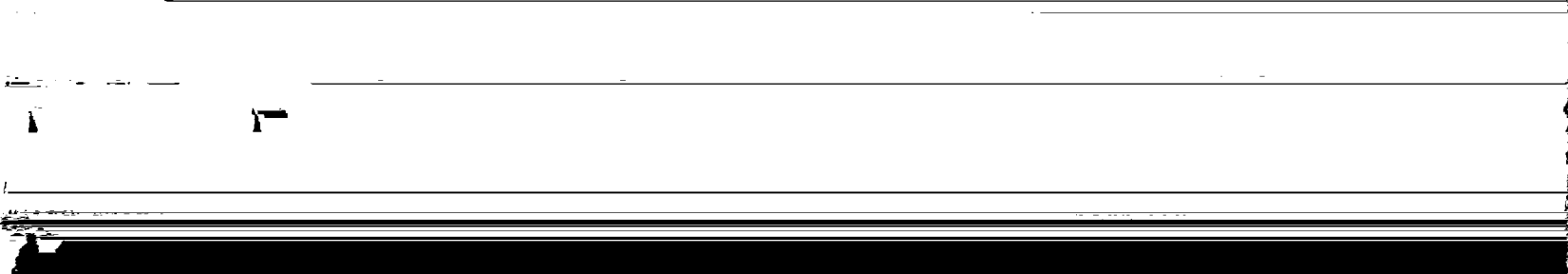
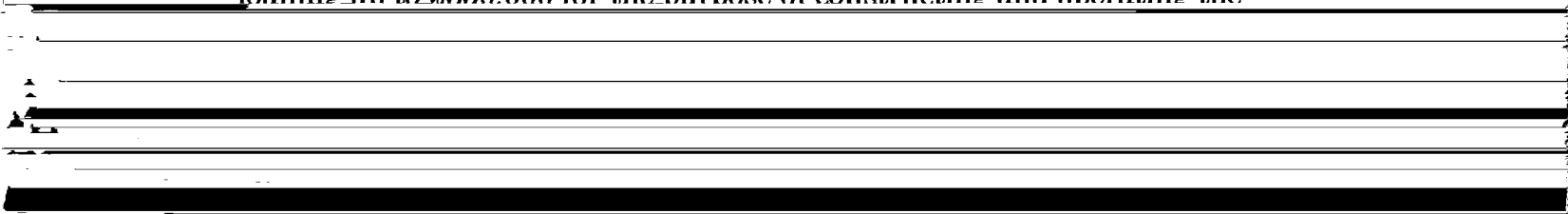
II. THE APPLICABLE LEGAL STANDARD

2. A broadcast applicant such as Huber, who relies on bank financing, must demonstrate that at the time of certification it “has reasonable and reliable evidence that the necessary funds would be available....” *Northampton Media Assocs. v. FCC*, 941 F.2d 1214 (D.C. Cir. 1991). A legally binding and enforceable firm financial commitment is not required, however. *Multi-State Communications, Inc. v. FCC*, 590 F.2d 1117, 1120 (D.C. Cir. 1978). To determine whether a bank’s letter affords reasonable assurance, the Commission generally considers the following factors: “whether the borrower’s qualifications have been preliminarily reviewed by the bank; whether adequate collateral has been demonstrated; and whether the tentative terms are specifically identified and acceptable to the lender as well as the borrower.” *Liberty Productions, a Limited Partnership*, 7 FCC Rcd. 7581, 7584 (1992). *See Scioto Broadcasters*, 5 FCC Rcd. 5158, 5161 (Rev. Bd. 1990). The bank, of course, must express a *present firm intention* to lend,² and not simply invite the proposed borrower to file a loan application when the FCC awards a construction permit. Such letters may be characterized as “accommodation letters.” The Bank Letter here is such a letter.

² FCC Form 301, Sec. III, Question 2.

III. HUBER'S BANK LETTER DOES NOT PROVIDE THE REQUISITE REASONABLE ASSURANCE

3. In Section III of her application Huber relies on Citizens Fidelity Bank and Trust Company as her sole source of funding. She estimates that \$281,000 would be required to construct the station and to operate it for three months without reliance on revenue. The Bank Letter informs Huber that "in the event [she is] awarded the authorization to construct the station and subject to the provisions outlined below, this bank *would be interested* in loaning up to \$350,000 for the purpose of constructing and operating the



5. The Bank Letter is fundamentally flawed in other respects as well.

The bank goes on to inform Huber that:

The loan would be for a period as long as two to five years with the interest at a percent increment above the bank's prime rate, subject to change from time to time. Principal payment would be deferred for the first year with equal monthly or quarterly payments thereafter. The collateral for the loan would be all of the tangible assets of the station.

All of the conditions affecting a loan are required to be contained within the four corners of a loan letter in order for it to be legally sufficient. *Multi-State, supra* at 1119. The Bank Letter does not meet this fundamental test. The term of the loan ("as long as two to five years") is incomprehensible. Further, it is impossible to determine from the four corners of the Bank Letter (or from extrinsic evidence) what interest increment the bank might have had in mind (or Huber might have contemplated). The Bank Letter specifies interest at "a percent increment over the bank's prime," another incomprehensible provision. How could Huber have known, let alone guessed what she might have to pay as interest during the critical initial three-month operating period?

6. The final paragraph of the Bank Letter is particularly telling when it is read in conjunction with the opening paragraph. The bank recognizes that "the FCC does not require a contractually binding commitment," and declares that its letter to Huber is not a binding loan commitment. It then volunteers, once again, that the only purpose of its letter is "to assure you and the FCC of *our interest in assisting you* to construct and operate the station in question...." (Emphasis supplied.) By no stretch of the imagination can such porous language, coupled with the previously quoted statement in the first paragraph ("would be interested in loaning") be construed as representing the bank's "present firm intention" to fund Huber's FM project.

7. Finally, as noted previously, the Bank Letter is conspicuously silent when it comes to an acknowledgment by the bank that it examined the borrower's qualifications, even preliminarily. *See Liberty Productions, supra* at 7584. Neither the letter nor any of the other documents exchanged by Huber permit an inference that the bank is familiar with such fundamentals as Huber's assets, her credit history, her business plan, and similar data, or that Huber presented the bank with relevant financial information. *See Scioto*, 5 FCC Rcd. at 5160.

IV. CONTINGENT REQUEST FOR DISCOVERY

8. If the Presiding Judge adds the financial issue requested by Brent, he should direct Huber to make herself available for deposition and to produce the following documents:

I. All documents relating to Huber's financial means to construct and operate the proposed FM station at New Albany, Indiana.

II. All balance sheets, budgets, and financial statements for Huber from 90 days prior to the filing of the application to and including the present.

III. All documents reflecting Huber's business plan, cost projections or revenue projections submitted to Citizens Fidelity Bank prior to the issuance of said Bank's October 29, 1991, letter to Huber.

IV. All other documents submitted to Citizens Fidelity Bank by or on behalf of Huber prior to the issuance of said Bank's October 29, 1991, letter to Huber in order to induce the Bank to issue such letter.

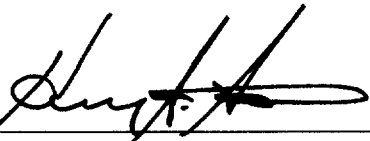
V. CONCLUSION

9. Brent has demonstrated that on its face, the Bank Letter fails to provide the requisite reasonable assurance of financial ability. Brent has thus met the threshold requirement for designating an issue for hearing. *See David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1257 (D.C. Cir. 1991). The documents requested are all germane to the newly-designated issue and should be produced in a timely manner.⁵

WHEREFORE, THE PREMISES CONSIDERED, It is respectfully requested that the subject Motion be Granted.

Respectfully submitted,

RITA REYNA BRENT

By: 

Henry A. Solomon
John Wells King

Her Attorneys

HALEY, BADER & POTTS
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

April 26, 1993

⁵ All factual allegations in this Motion are subject to official notice. Accordingly, no verification is required.



Citizens Fidelity Bank

October 29, 1991

Martha J. Huber
1927 Plum Hill Way
Floyds Knobs, Indiana 47119

Dear Ms. Huber:

It is our understanding you are filing an application with the Federal Communications Commission (FCC) for a construction permit for a new FM broadcast station in New Albany, In. This letter is to inform you that in the event you are awarded the authorization to construct the station and subject to the provisions outlined below, this bank would be interested in loaning up to \$350,000 for the purpose of constructing and operating the station.

The loan would be for a period as long as two to five years with the interest at a percent increment above the bank's prime rate, subject to change from time to time. Principal payment would be deferred for the first year with equal monthly or quarterly payments thereafter. The collateral for the loan would be all the tangible assets of the station.

We understand that at this stage of the process the FCC does not require a contractually binding commitment, and this letter is not such a loan commitment. We do intend by this letter to assure you and the FCC of our interest in assisting you to construct and operate the station in question, provided of course, that the funding of the amount indicated, or any part thereof, will be subject to formal approval by the bank after the bank's review of your financial condition at the time and the execution of a loan agreement incorporating those terms and conditions that we may deem appropriate and similar to which we customarily require in an agreement of this type.

Sincerely,

Leo Tierney
Senior Vice President

CLT/dmp

DRAFT BANK LETTER

Martha J. Huber
1927 Plum Hill Way
Flyds Knobs, Indiana 47119

Dear Ms. Huber:

It is our understanding you are filing an application with the Federal Communications Commission (FCC) for a construction permit for a new FM broadcast station in New Albany, IN. This letter is to inform you that in the event you are awarded the authorization to construct the station and subject to the provisions outlined below, this bank is prepared to loan up to \$350,000 for the purpose of constructing and operating the station.

The loan would be for a period of five years with the interest at _____ percent above the bank's prime rate at the time. No principal payments would be required for the first year with equal quarterly payments thereafter. The collateral for the loan would be all the tangible assets of the station.

We understand that at this stage of the process the FCC does not require a contractually binding commitment, and this letter is not such a loan commitment. We do intend by this letter to assure you and the FCC of our interest in assisting you to construct and operate the station in question, provided of course, that the funding of the amount indicated, or any part thereof, will be subject to formal approval by the bank after the bank's review of your financial condition at the time and the execution of a loan agreement incorporating those terms and conditions that we may deem appropriate and similar to which we customarily require in an agreement of this type.

Very truly yours,

Bank Officer

CERTIFICATE OF SERVICE

I, Dinah L. Hood, a secretary in the law firm of Haley, Bader & Potts, hereby certify that a copy of the foregoing **"Motion To Enlarge Issues"** was mailed, postage pre-paid, this 26th day of April, 1993 to the following:

The Honorable Richard L. Sippel *
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